

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

TRAVELERS INDEMNITY COMPANY and  
TRIUMPH CONSTRUCTION CORP.,

Plaintiffs,

v.

UNITED STATES FIRE INSURANCE  
COMPANY,

Defendant.

CIVIL ACTION NO.:

7:22-CV-06440-NSR

**NOTICE OF MOTION TO DISMISS  
PLAINTIFFS' COMPLAINT**

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 8/8/2022

To: KENNEY SHELTON LIPTAK NOWAK LLP  
Attorneys for Plaintiffs  
Travelers Indemnity Company and  
Triumph Construction Corp.  
233 Franklin Street  
Buffalo, New York 14202  
Attn: Matthew C. Ronan, Esq.

**PLEASE TAKE NOTICE** that at a date and time to be set by the Court, the undersigned, attorneys for Defendant United States Fire Insurance Company ("US Fire"), will apply to the Honorable Nelson Stephen Roman, U.S.D.J., at The Hon. Charles L. Breant Jr. Federal Building and United States Courthouse, 300 Quarropas Street, White Plains, New York, for an Order in the form submitted herewith dismissing all counts alleged against US Fire in the Complaint brought by Plaintiffs Travelers Indemnity Company and Triumph Construction Corp. pursuant to Fed. R. Civ. Pro. 12(b)(6).

**PLEASE TAKE FURTHER NOTICE** that US Fire will rely upon the Memorandum of Law in Support of US Fire's Motion to Dismiss the Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6), Certification of Frank Falcone, Esq., accompanying exhibits, and the Proposed Order, each of which is electronically filed and served herewith.

MEMO ENDORSED

**KENNEDYS CMK LLP**

By: /s/ Frank M. Falcone

Kristin V. Gallagher, Esq.

Frank M. Falcone, Esq.

570 Lexington Avenue, 8th Floor

New York, New York 10022

Tel: (212) 252-0004


*Attorneys for United States Fire Insurance  
Company*

Dated: August 5, 2022

Defendant's Motion to Dismiss is denied without prejudice for failure to follow the Court's Individual Rules of Practice in Civil Cases § 3.A.ii., subject to refiling before the newly assigned District Judge. The Clerk of the Court is kindly directed to terminate the motion at ECF No. 8.

Dated: August 8, 2022  
White Plains, NY

SO ORDERED:



HON. NELSON S. ROMAN  
UNITED STATES DISTRICT JUDGE